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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. [redacted] 148

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

SUBJECT INDEX.

List of Authorities Cited.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

On complaint of Poehlmann Bros. Company the Illinois Railroad and Warehouse Commission, through the

order complained of, reduced by 50 per cent. a factor of a through rate common to interstate and intrastate traffic on a record which was passed upon by the Interstate Commerce Commission and held insufficient to warrant any reduction in that factor. On appeal the Supreme Court of Illinois sustained and affirmed the order of the Illinois Commission. The case is brought to this court on writ of error.

The order appealed from relates to transportation charges on coal and on manure consumed in connection with the production of flowers at the plant of Poehlmann Bros. Company, Morton Grove, Illinois. The portion of the order relating to charges on manure does not involve interstate traffic and is not before this court. Several carriers were joined with plaintiff in error as defendants in the proceeding before the Railroad and Warehouse Commission (Trans., 2; Rec., 6), but the order was entered against the plaintiff in error alone. (Trans., 12; Rec., 35.) Since the order was entered the Railroad and Warehouse Commission of the State of Illinois has been superseded by the State Public Utilities Commission of Illinois. (Trans., 20; Rec., 92.)

The rate ordered reduced applies to that portion of through hauls which lies between Chicago, Illinois, and Morton Grove, Illinois, for which transportation the plaintiff in error makes a charge of forty cents per ton on carload shipments of coal which are moved as far as Chicago on proportional rates applicable from points of origin in Illinois, Indiana, Ohio and certain other States.

The Chicago, Milwaukee & St. Paul Railway Company has its eastern terminus at Chicago. It, therefore, does not reach the coal fields to the east and south of that

terminus from which Chicago and its environs obtain coal. Morton Grove is a suburban town northwest of Chicago, where Poehlmann Bros. Company operates extensive greenhouses that are heated by coal.

Quite a large number of railroads carry coal from southern points in Illinois and Indiana to Chicago. Also from points farther east, in Ohio, Pennsylvania and West Virginia. Those roads publish two kinds of rates, namely:

(a) A local rate, applicable from point of origin to destinations on their own rails in Chicago, and

(b) A proportional rate, applicable as a proportion of a through rate when the coal passes through Chicago to points beyond on the rails of a connecting carrier, such as the Chicago, Milwaukee & St. Paul Railway Company.

When the coal moves under the through rate to destinations beyond Chicago, the charge of the originating carrier is ten cents a ton less than its local rate to Chicago. This proportional rate, combined with the local rate of the Chicago, Milwaukee & St. Paul Railway Company as a connecting carrier, makes up the through rate from point of origin, via Chicago, to destinations beyond Chicago, such as Morton Grove, (Trans., 2; Rec., 8) the destination involved in this proceeding. The earnings of the Milwaukee Road out of the through rate on such coal movements are its full local rates, as published in its tariffs. Forty cents per ton is its local rate on carload shipments of coal from Chicago to Morton Grove. (Trans., 13; Rec., 48.) The earnings of the inbound carriers vary with the distances from Chicago of the points of origin. For the shorter hauls, which are from Indiana points of origin and Illinois points of origin, their earnings are the lowest.

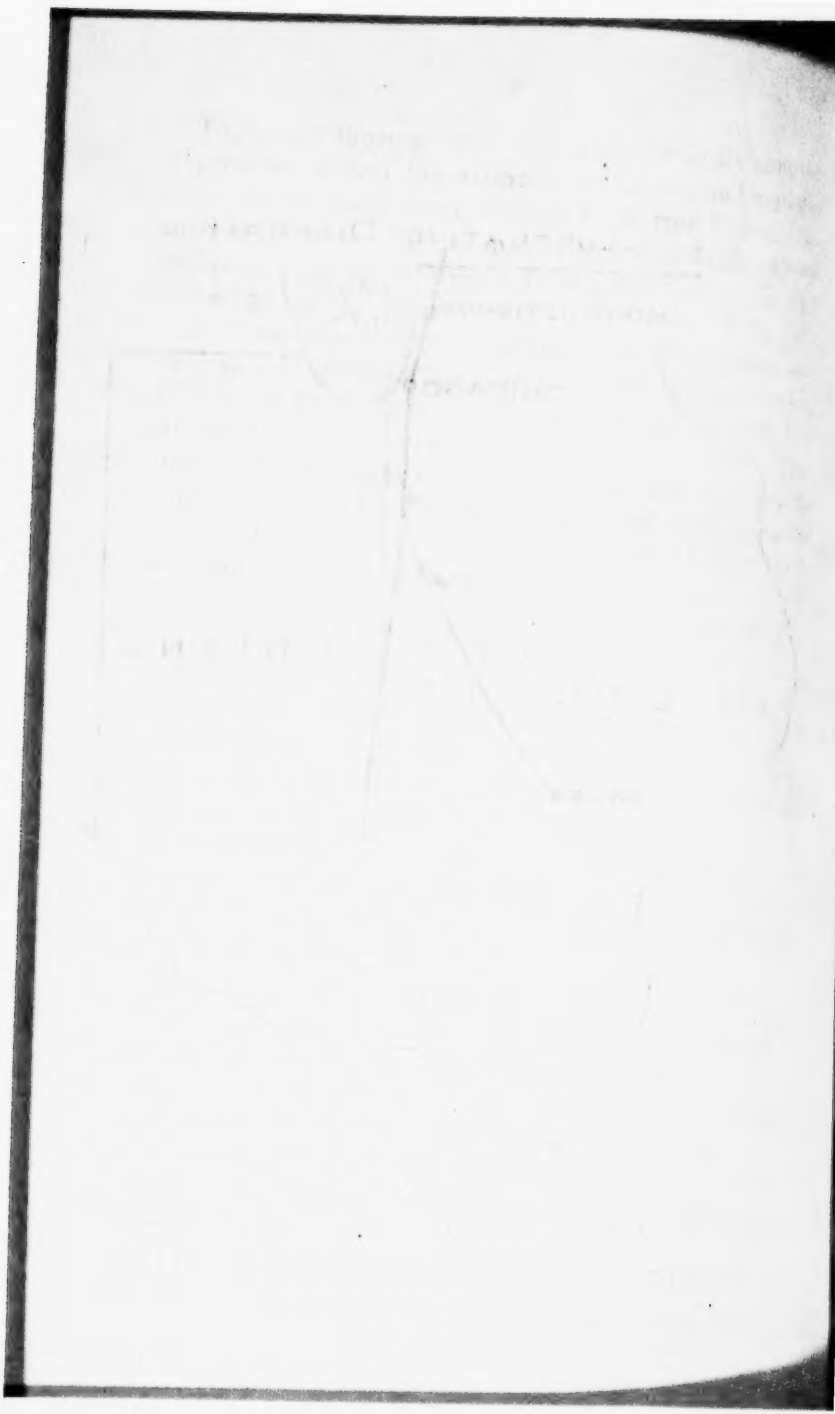
To further illustrate this rate structure in its simpler aspects we submit the diagram on the adjoining page. The distance from Pana, Illinois, to Morton Grove, Illinois, is 217 miles. The through rate on coal, $1.22. From Sullivan, Indiana, to Morton Grove, the distance is 216 miles and the through rate, $1.27. The effect of the Illinois Commission's order here involved, is to reduce the rate on coal between Pana, Illinois, and Morton Grove, Illinois, to $1.02, which is 25 cents a ton less than the current rate from the Indiana point equally distant. The portion of the route marked in red on the diagram is over the rails of the Milwaukee Road and is common to all movements of coal to Morton Grove, whether they originate in Illinois, Indiana, Ohio, Pennsylvania or West Virginia, and whether they originate on the lines of the Chicago & Eastern Illinois Road, shown on the diagram, or on the lines of any of the many other roads that haul coal to Chicago from points in the States named.

It is the portion of the route between Chicago and Morton Grove, shown in red, on which the Illinois Commission ordered the fifty per cent. reduction in rate and on which the Interstate Commerce Commission held, on the same record, that the rate is not shown to be unreasonable and may not properly be regulated apart from the through rate as a whole.

The question passed upon in the order appealed from in this case was decided by the Interstate Commerce Commission on a complaint brought against the Chicago, Milwaukee & St. Paul Railway Company by Poehlmann Bros. Company, the same complainant that brought the complaint before the Illinois Railroad & Warehouse Commission which resulted in the order that is here being reviewed.

At the time the Interstate Commerce Commission took jurisdiction of this question, that Commission had before

	DISTANCE	RATE PER TON
Pana to Morton Grove	217 Miles	$1.22
Sullivan to Morton Grove	216 Miles	$1.27



it the same evidence and in fact the same record that was before the Illinois Commission when it subsequently heard the case and entered the order appealed from. How the two Commissions happened to pass upon the same record is explained by the fact that the record made before the Interstate Commerce Commission, in so far as facts and evidence are concerned, was, by agreement and stipulation between the parties, made the record before the Railroad & Warehouse Commission of the State of Illinois at the hearing before that body. (Trans., 19; Rec., 69-89.)

There were added to the record before the Illinois Railroad & Warehouse Commission a few questions and answers not contained in the record before the Interstate Commerce Commission (Trans., 14 to 19; Rec., 49-68), but those questions and answers in no way changed or modified any fact here involved and are in no part material to the issues before this court. The Interstate Commerce Commission held that the evidence was not sufficient to warrant a reduction in the rate that was reduced by the Illinois Commission acting on the same record. The Interstate Commerce Commission's decision is reported in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

The Interstate Commerce Commission, in taking jurisdiction of the question involving the rate subsequently regulated by the Illinois Commission, found the rates from points of origin to destination, as published in the carriers' tariffs, to be "through rates," and held that the factor of the *through rates* which the Illinois Commission regulated, could not be regulated independent of or apart from a regulation of the through rate *as a whole*. Id., 92.

The tariffs on which the State Commission passed were constructed the same as those on which the Inter-

state Commerce Commission passed, and a through intrastate rate, from point of origin to destination, was involved in the same way as the through interstate rate which the Interstate Commerce Commission held should be regulated as a whole and not by the regulation of a single factor thereof. (Trans., 2, 3, 11, 13, 14; Rec., 6-10, 32-34, 45-57.)

The Illinois Commission specifically found, as did the Interstate Commerce Commission, that the record contained no evidence attacking the through rate as a whole, (Trans., 11; Rec., 33) and specifically held that the evidence did not justify it in entering upon a regulation of the through rate. (Trans., 11; Rec., 34.)

Poehlmann Bros. Company by the order appealed from is to be allowed reparation to the extent of 20 cents per ton on coal from Illinois points of origin if the order of the Illinois Commission is sustained, and Poehlmann Bros. Company is now buying substantially all of its coal in Illinois. (Trans., 15; Rec., 59.) Prior to the time the Interstate Commerce Commission dismissed the complaint against the factor of the through rates, which the Illinois Commission reduced, Poehlmann Bros. Company received two-thirds of its coal over interstate routes from points east of Illinois. (Trans., 25; Rec., 105.)

SPECIFICATION OF ERRORS RELIED UPON

(1) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is in violation of paragraph three of Section 8 of Article I. of the Constitution of the United States in that said order regulates, or assumes to regulate, a feature of commerce in which interstate commerce and intrastate commerce are commingled and said order was entered after federal jurisdiction of said feature of commerce had been taken by the Interstate Commerce Commission and said order of the Railroad and Warehouse Commission of Illinois regulates, or attempts to regulate, said feature of commerce differently from and inconsistently with its regulation by the Interstate Commerce Commission, thus constituting a burden upon and an interference with interstate commerce. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(2) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is in violation of paragraph three of Section 8 of Article I. of the Constitution of the United States in that said order requires plaintiff in error to discriminate against localities outside the State of Illinois and grant preferences to localities within the State of Illinois in the charges which it makes for identically the same service in transporting over its rails carloads of coal. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(3) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes

Section 3 of the Act to Regulate Commerce as amended in that said order requires plaintiff in error to give undue and unreasonable preference and advantage to persons, companies, firms and corporations who are producers and shippers of coal and who are located within the State of Illinois, in that said order requires plaintiff in error to subject persons, companies, firms and corporations who are producers of coal outside the State of Illinois to undue and unreasonable prejudice and disadvantage through obliging plaintiff in error to charge a less rate for the transportation of coal in carloads between specified points on its rails when the coal originates within said state than it is lawfully permitted to charge and does charge for identically the same service on interstate shipments of coal. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(4) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 6 of the Act to Regulate Commerce as amended in that said order requires plaintiff in error to charge different and less compensation for transportation of property, to wit: carloads of coal, and for services in connection therewith, between certain points named in tariffs on file with the Interstate Commerce Commission than the rates and charges specified in said tariffs so on file. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(5) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 13 of the Act to Regulate Commerce as amended in that said Railroad and Warehouse Commission disregarded its right and privilege secured by said section to have the Interstate Commerce Commission investigate any complaint forwarded by the Railroad Com-

mission of any state and obtain such relief as the complaint might merit and in lieu thereof attempted to substitute power and assumed authority of its own to investigate and regulate a feature of commerce in which interstate and intrastate commerce are commingled and over which the Federal Congress, by action of the Interstate Commerce Commission, had already assumed jurisdiction. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(6) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 15 of the Act to Regulate Commerce as amended in that said section delegates to the Interstate Commerce Commission power and authority over through rates and joint rates and power and authority to prescribe just and reasonable individual or joint charge or charges for through transportation participated in by two or more carriers and the Railroad and Warehouse Commission of the State of Illinois, by its order in this case, regulates, or assumes to regulate, one factor of a through rate without regard to the through rate as a whole, which factor is applicable alike on interstate and intrastate traffic and which factor the Interstate Commerce Commission, acting within its lawful functions, held to be a factor not subject to independent regulation apart from the through rate. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(7) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is unreasonable and unlawful in that said commission, without finding the through rate excessive or discriminatory and without facts before it on which to make such finding, entered said order to reduce, solely for the benefit of Illinois shippers and producers of coal, the transportation

charges for a factor of the transportation service involved that is common to interstate and Illinois movements of coal and over which factor the Interstate Commerce Commission had previously assumed jurisdiction and held, on the same record, said factor was not shown to be subject to separate regulation apart from the through rate as a whole. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(8) The Interstate Commerce Commission having held, on the same evidence that was presented to the Railroad and Warehouse Commission of the State of Illinois in this case, that the Chicago, Milwaukee & St. Paul Railway Company was not obliged to reduce its charges for that part of the through service involved in both interstate and Illinois transportation of coal unless and until the through rate was shown to be unreasonable or discriminatory, the order of the Railroad and Warehouse Commission of the State of Illinois appealed from, being in conflict with the opinion of the Interstate Commerce Commission entered on the same state of facts, is void, because of being in contravention of the Act to Regulate Commerce as amended and of paragraph three of Section 8 of Article I. of the Constitution of the United States. The Supreme Court of Illinois, therefore, erred in affirming and giving effect to said order of said Railroad and Warehouse Commission.

(9) There is insufficient evidence in the record to justify the order of rate reduction entered by the Railroad and Warehouse Commission of Illinois. This question of fact having been so determined on the same record by the Interstate Commerce Commission, the Supreme Court of Illinois erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

BRIEF OF ARGUMENT.

The order of the Railroad and Warehouse Commission of the State of Illinois, the validity of which this court is asked to pass upon, is unlawful for the following reasons:

I.

The order is unlawful in that it is an attempt by the Illinois Commission to exercise assumed jurisdiction of a rate question over which the Interstate Commerce Commission had previously assumed jurisdiction and has indicated the manner in which said rate question might be regulated and the manner in which it might not be regulated.

Northern Pacific Ry. Co. v. *State of Washington*, 222 U. S., 370.

Poehlmann Bros. Company v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

The Illinois Commission assumes, by the order, to regulate the question in the manner which the Interstate Commerce Commission has held it should not be regulated, namely: by regulating one factor, to wit: the factor common to interstate and intrastate shipments alike, without regulating the through rate as a whole. (See Opinion of Illinois Commission, Trans., pp. 11, 12.)

The two Commissions acted on identically the same record. The record on which the Interstate Commerce Commission acted was, by stipulation, made the record upon which the Illinois Commission acted. (Trans., 14; Rec., 49.) The action of the Interstate Commerce Commission on this question, and its report of its conclusions,

will be found in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

> "There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."
>
> *Minnesota Rate Cases*, 230 U. S., 352, 399.

See also:

Mondou v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, 47, 54, 55.

II.

> "In matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State legislation."
>
> *Minnesota Rate Cases*, 230 U. S., 352, 399, 400.

See also:

So. Ry. Co. v. *Reid*, 222 U. S., 424, 436.

Northern Pac. Ry. Co. v. *Washington*, 222 U. S., 370, 378.

Gulf, Colorado & Santa Fe Ry. Co. v. *Hefley*, 158 U. S., 98, 103, 104.

Bowman v. *C. & N. W. Ry. Co.*, 125 U. S., 465, 481, 485.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S., 196, 204.

County of Mobile v. *Kimball*, 102 U. S., 691, 697.

Welton v. *Missouri*, 91 U. S., 275, 280.

Ex parte McNiel, 13 Wall., 236, 240.

Cooley v. *Board of Wardens*, 12 How., 299, 319.

III.

The Interstate Commerce Commission is clothed with power, granted by Congress through the Act to Regulate Commerce, adequate to meet the varying exigencies that arise and to protect the national interests by securing the freedom of interstate commercial intercourse from local control.

Houston, East & West Texas Ry. Co. v. *U. S.*, and *Texas & Pacific Ry. Co.* v. *U. S.* (Shreveport Case), 234 U. S., 342, 350, 351.

See also:

Minnesota Rate Cases, 230 U. S., 352, 398, 399.

Second Employers' Liability Cases, 223 U. S., 1, 47, 53, 54.

Smith v. *Alabama*, 124 U. S., 465, 473.

County of Mobile v. *Kimball*, 102 U. S., 691, 696, 697.

Brown v. *Maryland*, 12 Wheat., 419, 446.

Gibbons v. *Ogden*, 9 Wheat., 1, 196, 224.

IV.

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

See also:

L. & N. R. R. v. *Eubank*, 184 U. S., 27.

V.

On the question of whether the order appealed from is in fact injurious and whether it does actually involve substantial property rights, we direct attention to the undisputed evidence that it reduces the gross earnings of the plaintiff in error on the coal in questi st fifty per cent. That the original complainant, Poehlmann Bros. Company, shipped two-thirds of its coal interstate from points of origin outside the State of Illinois prior to the decision of the Interstate Commerce Commission (Trans., 25; Rec., 105) is undisputed; that when the Interstate Commerce Commission failed to reduce the rate and after Poehlmann Bros. Company instituted proceedings before the Illinois Commission that shipper changed its patronage from Eastern mines to Illinois mines and receives now ninety-five per cent. of its coal from Illinois points of origin (Trans., 15; Rec., 59) is admitted; that it ships approximately 30,000 tons of coal per annum to its plant at Morton Grove (Trans., 24; Rec., 105. Trans., 15; Rec., 58, 59) is undisputed; that the plaintiff in error's rate of 40 cents per net ton was reduced by order of the State Commission to not exceed 20 cents per net ton on the coal in question (Trans., 12; Rec., 35) is also undisputed; that plaintiff in error would lose $6,000 per year on Poehlmann Bros. Company's coal, alone, by the enforcement of the order appealed from is obvious; that producers of coal in other states than Illinois, who were formerly patronized, will be discriminated against and will lose business to the Illinois competitor, is already an established fact.

> "That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil

is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

VI.

"It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 355.

When the carrier is charging a rate for transportation which the Interstate Commerce Commission holds is not shown to be excessive or discriminatory, and is ordered by a State Commission to reduce that charge fifty per cent. in favor of the intrastate business, an obvious dis-

crimination must result from an obedience of such order. The carrier, in such case, has the legal right to choose whether it will eliminate the discrimination by reducing both the intrastate rate and the interstate rate or by disregarding the State Commission's order to reduce the intrastate rate, and continuing to maintain both rates on the interstate rate basis.

Great Northern Railway Company v. *State of Minnesota*, 238 U. S., 340.

VII.

The order appealed from commands and directs the plaintiff in error to perform transportation services for intrastate shippers of coal at the rate of 20 cents per ton, or one-half the transportation charge it is lawfully collecting from interstate shippers for identically the same service. Said order of the Illinois Commission was affirmed by the Supreme Court of Illinois after the Interstate Commerce Commission, considering the complaint of the same complaining party, on the same evidence as was before the Illinois Commission, had sustained and upheld as lawful the charge of 40 cents per ton for transporting the coal in question over the same rails and between the same points involved in the Illinois Commission's decision and order.

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351, 352.

See also:

Illinois Central R. R. Co. v. *Behrens*, 233 U. S., 473.

Interstate Commerce Commission v. *Goodrich Transit Company*, 224 U. S., 194, 205, 213.

Second Employers' Liability Cases, 223 U. S., 1, 48, 51.

Southern Railway Co. v. *U. S.*, 222 U. S., 20, 26, 27.

B. & O. R. R. Co. v. *Interstate Commerce Commission*, 221 U. S., 612, 618.

VIII.

"The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to the Federal care."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351.

IX.

The authority of Congress, exercised through the Interstate Commerce Commission, extends to intrastate common carriers that are instruments of interstate commerce in such way as necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of interstate service, and to the maintenance of conditions under which interstate commerce

may be conducted upon fair terms and without molestation or hindrance.

Texas & Pacific Ry. Co. v. *U. S.*, 234 U. S., 342, 351.

X.

This court is not asked to revise the construction placed upon a State Statute by the State Court, but is asked to determine whether the application made of a State Statute is in this instance in contravention of the Commerce Clause of the Constitution and the provisions of the Act to Regulate Commerce. Questions of this character are for the determination of this court.

Southwestern Telegraph & Telephone Company v. *Danaher*, 238 U. S., 482, 489.

A State exceeds its lawful authority when it attempts to regulate rates applicable on interstate commerce or to subject the operation of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection.

Minnesota Rate Cases, 230 U. S., 352, 401.

See also:

Yazoo & Miss. Valley R. Co. v. *Greenwood Grocery Co.*, 227 U. S., 1.

Texas & N. O. R. R. v. *Sabine Tram Co.*, 227 U. S., 111.

R. R. Commission of Ohio v. *Worthington*, 225 U. S., 101.

Herndon v. *C. R. I. & P. R. R. Co.*, 218 U. S., 135.

St. Louis S. W. Ry. Co. v. *Arkansas*, 217 U. S., 136.

Houston & T. C. R. R. Co. v. *Mayes*, 210 U. S., 321.

Atlantic Coast Line v. *Wharton*, 207 U. S., 328.

Miss. R. R. Commission v. *I. C. R. R. Co.*, 203 U. S., 335.
McNeill v. *So. Ry. Co.*, 202 U. S., 543.
Hanley v. *K. C. So. Ry. Co.*, 187 U. S., 617.
Louisville & Nashville R. R. Co. v. *Eubank*, 184 U. S., 27.
C. C. C. & St. L. Ry. Co. v. *Illinois*, 177 U. S., 514.
Covington Bridge Co. v. *Kentucky*, 154 U. S., 204.
Wabash Ry. Co. v. *Illinois*, 118 U. S., 557, 577.
Hall v. *Decuir*, 95 U. S., 485, 488.

XI.

"This court will review the finding of facts by a state court (1) where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts. *Kansas City Southern Ry.* v. *Albers Commission Co.*, 223 U. S., 573, 591; *Creswill* v. *Knights of Pythias*, 225 U. S., 246, 261; *Wood* v. *Chesborough*, 228 U. S., 672, 678."

Northern Pacific Railway v. *North Dakota*, 236 U. S., 585, 593.

The Interstate Commerce Commission, having examined the record in this case and entered its conclusions thereon that said record contained insufficient facts to warrant a reduction of the rate in question, it follows that the finding of the Illinois Commission is without sustaining evidence, is arbitrary, amounts to administrative fiat and comes under the Constitution's condemnation of all arbitrary exercise of power.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

XII.

The order of the Illinois Commission, entered on the petition of a shipper, is not a regulation of the through rate as such, but is, in effect, the fixing of divisions as between carriers participating in the through rate when the carriers have not failed to agree on divisions and have not asked the Commission to fix divisions, and since the traffic involved is intermingled state and interstate traffic, the State Commission exceeded its powers and invaded the function of the Interstate Commerce Commission, delegated by Section 15 of the Act to Regulate Commerce as amended.

XIII.

Plaintiff in error exhausted its means of remedy in the State tribunals without gaining relief.

C. M. & St. P. Ry. Co. v. *Public Utilities Commission*, 268 Ill., 49.

XIV.

The rate of 40 cents per ton, not having been shown to have been increased since January 1, 1910, is presumed to be a reasonable rate. The burden of proving its unreasonableness rested upon the complainant.

Section 15 of the Act to Regulate Commerce.

That complainant failed to sustain the burden of proof was specifically found by the Interstate Commerce Commission in passing upon the evidence in this record, which evidence was made the basis of the order entered by the Illinois Commission.

Poehlmann Bros. Company v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

ARGUMENT.

I.

THE CONFLICT OF STATE AUTHORITY WITH INTERSTATE AUTHORITY IN THE REGULATION OF THE RATE IN QUESTION.

Let it be borne in mind from the beginning that the record before the Illinois Commission, on which the order appealed from was entered, is the same record that was previously considered by the Interstate Commerce Commission. (Trans., 19; Rec., 69-89.) Let it also be borne in mind that identically the same transportation service and identically the same questions of compensation therefor, by said record presented, were passed upon by the two Commissions.

The Interstate Commerce Commission had the questions here involved submitted to it and assumed jurisdiction over same on October 26, 1912. (See *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.) The petitioner asked the Interstate Commerce Commission then, as it subsequently did the Illinois Commission, to reduce the rate on coal between Chicago and Morton Grove.

The Interstate Commerce Commission, in denying the petition, held:

(1) That the evidence was insufficient to warrant a reduction in the rate complained of.

(2) That the factor of the rate under attack should not be regulated apart from the through rate as a whole, and

(3) That there was a delicate rate relationship or rate adjustment involved which should not be changed on the evidence introduced in this record.

The following is quoted from the Interstate Commerce Commission's opinion in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92:

"While, as stated, only the delivering line is made a party defendant, the comparisons made by complainant are nearly all with respect to through rates, or factors of through rates, from points of origin to destinations within, or just beyond, the Chicago switching district. The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment.

Upon the record it clearly appears that complainant is not discriminated against by defendant.

The traffic in question is through traffic. The rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.

Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rate under attack, we must refrain from expressing any conclusion upon the reasonableness of either rate. The complaint must be dismissed, and it will be so ordered."

The Illinois Commission reached almost diametrically opposite conclusions, and took action directly conflicting with that taken by the Interstate Commerce Commission. The Illinois Commission, while agreeing with the Interstate Commerce Commission that there was no evidence in the record on which the through rate could be

changed or regulated, differed with the Interstate Commerce Commission as to the necessity of regulating the through rate as a whole and held that there was no question of propriety of rates that should prevent the case being disposed of by regulating that factor of the through rate involved in the haul from Chicago to Morton Grove, and differed with the Interstate Commerce Commission in concluding that the proof in this record satisfactorily showed the rate of forty cents per ton to be one hundred per cent. higher than the rate it determined to be the proper one in the order appealed from.

The following is quoted from the opinion of the Illinois Commission, which constitutes a part of the record in this case:

> "While the complaint herein asked for the establishment of through rates via the several defendants' roads herein from points in Illinois to Morton Grove, the record also shows that the only rate attacked by the complainant is the charge of forty cents per net ton made by the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove and all of the evidence before the Commission in this case is directed against the unreasonableness of this rate.
>
> The reasonableness of the charge of the other defendant roads for the line haul was not attacked in any manner in this proceeding, and no evidence offered upon that subject. Hence we assume that the line haul charge is considered reasonable, and without going into detail upon that branch of the case, it is sufficient to say that the Commission does not feel it necessary at this time to enter into the question of discrimination as charged in the complaint, nor does it feel that it is necessary or that it will be justified in entering into the question of through rates between the other defendant roads and the defendant, Chicago, Milwaukee & St. Paul Railway Company, from the coal producing district of Illinois to Morton Grove, believing that the matter can be

properly disposed of without entering into that question.

This leaves for consideration then the one question of the reasonableness or the unreasonableness of the charge of forty cents per net ton by the defendant, Chicago, Milwaukee & St. Paul Railway Company, between Galewood and Morton Grove on coal and manure.

After a careful investigation of the rates charged by the defendant, Chicago, Milwaukee & St. Paul Railway Company, from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant, Chicago, Milwaukee & St. Paul Railway Company, from Galewood to Morton Grove, the Commission believes said charge of forty cents per net ton to be an unreasonable charge.

* * * * *

It is therefore ordered, adjudged and decreed by the Commission that the said rate of forty cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed twenty cents per net ton on coal.

* * * * *

Commission finding that the charge herein made and specified is a reasonable charge therefor.

By order of the Commission this 25th day of October, 1913, dated at Springfield, Illinois." (Trans., 11, 12; Rec., 33-35.)

It will be noted in the opinions of the respective Commissions that the two petitions were also essentially the same. Each petition attacked the rate on coal, in carloads, from Chicago to Morton Grove. Each petition asked that the through rate be regulated. The petition before the Interstate Commerce Commission, as is shown in that Commission's opinion, introduced no defendant in the case other than the Chicago, Milwaukee & St. Paul Railway Company. The petition before the Illinois Commission differed in that it made certain line haul carriers

parties defendant. No evidence was introduced at the hearing, however, relative to the charges of other carriers or relative to the through rate. (Trans., 11; Rec., 33.)

Without qualification it may be said the two petitions were identical, in so far as the issues on which proof was introduced, are concerned.

> "This court will review the finding of facts by a state court (1) where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts. *Kansas City Southern Ry.* v. *Albers Commission Co.*, 223 U. S., 573, 591; *Creswill* v. *Knights of Pythias*, 225 U. S., 246, 261; *Wood* v. *Chesborough*, 228 U. S., 672, 678."
>
> *Northern Pacific Railway* v. *North Dakota*, 236 U. S., 585, 593.

The points of conflict as between the State and Federal authority, which have developed out of the same pleadings and same evidence, may be briefly summarized as follows:

One.

The Federal Commission held that the evidence introduced did not justify a reduction in the forty-cent factor of the through rate, this forty-cent charge being for that portion of the through haul between Chicago and Morton Grove.

The Illinois Commission held that the same evidence showed the forty-cent factor to be one hundred per cent. too high and justified the reduction to twenty cents.

Two.

The Federal Commission held that the forty-cent rate was a factor of a through rate which ought not

to be regulated independent of, and apart from, the through rate as a whole.

The Illinois Commission held that it was not necessary to regulate the through rate as a whole and that the forty-cent factor might properly be regulated entirely independent of and without regard to the regulation of the through rate.

Three.

The Federal Commission considered the propriety of ordering a reduction in the forty-cent rate factor and announced this conclusion:

> "The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment." (*Poehlmann Bros. Co.* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.)

The Illinois Commission disregarded questions of the propriety of disturbing the important rate relationships and announced that it believed "the matter can be properly disposed of without entering into that question." (Trans., 12; Rec., 34.)

A similar condition in principle arose in *Northern Pacific Railway Company* v. *State of Washington*, 222 U. S., 370. In that case the Federal Congress had taken jurisdiction of hours of service of certain employees of carriers engaged in interstate commerce and, incidental to regulating the hours of service, provided that the regulation should not become effective until after a specific future date. The State of Washington, subsequent to the passage of the act but before the date on which it was to become effective, attempted to regulate the hours of service of employees engaged in commingled interstate and intrastate commerce. This court held that Congress, in allowing the carriers an additional

period in which to adjust themselves to the requirements of the new law, had barred the State from interfering during such period in the way of State regulation of such hours of service.

Mr. Justice White, in delivering the opinion of the court, said in part as follows:

> "We are of opinion that it becomes manifest that it would cause the statute to destroy itself to give to the clause postponing its operation for one year the meaning which must be affixed to it in order to hold that during the year of postponement state police laws applied. * * * The purpose of Congress in giving time was to enable the necessary adjustments to be made by the railroads to meet the new conditions created by the act, a purpose which would of course be frustrated by giving to the provision as to postponement the significance which would destroy the very reason which caused it to be enacted."

In the case at bar Congress, speaking through the interstate Commerce Commission, provided that the forty-cent per ton rate on coal from Chicago to Morton Grove should be exempt from reduction or other regulation unless and until evidence was presented as to the reasonableness and lawfulness of the through rate of which the forty-cent rate is a part. Illinois has attempted, by the order appealed from, to interpose State regulation during the exempted period just as did the State of Washington in the case quoted from above.

The following portion of the opinion in the Washington case, *supra,* is also pertinent:

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose

to call into play its exclusive power. This being the conceded premise upon which alone the state law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was at once removed from the sphere of the operation of the authority of the State. To admit the fundamental principle and yet to reason that because Congress chose to make its prohibitions take effect only after a year, the matter with which Congress dealt remained subject to state power, is to cause the act of Congress to destroy itself; that is, to give effect to the will of Congress as embodied in the postponing provision for the purpose of overriding and rendering ineffective the expression of the will of Congress to bring the subject within its control—a manifestation arising from the mere fact of the enactment of the statute."

While abstractly considered, the rate from Chicago to Morton Grove is a local state rate, yet, as applied to the traffic that moves under it, it is part of a through rate for the through haul of traffic that is interstate. The Interstate Commerce Commission so held in *Poehlmann Bros.* v. *Railway Co., supra,* where this rate and its relations to other rates were directly involved. The question presented, therefore, is not simply one of transportation that is "wholly within one state," but embraces transportation that is interstate in character. The phrase in Section 1 of the Interstate Commerce Act, "wholly within one state," has "appropriate reference to exclusively intrastate traffic separately considered; to the regulation of domestic commerce as such." *Houston & Texas Ry.* v. *U. S., supra,* 358.

This language of Section 1 does not control where interstate commerce is directly involved. Interstate commerce is directly involved here, for the Interstate Commerce Commission in dealing with this precise rate

has found it to be a part of a through interstate rate, and that its reasonableness could not be considered or determined "*entirely apart from its relationship to the through rate for the through haul from interstate points of origin.*" *Poehlmann Bros.* v. *Ry. Co., supra,* 92.

This finding precludes the exercise of the state's power, through its Commission, to deal with this rate separately as a local rate. If this were not so, the State Commission would have power to override the Federal Commission, and to nullify its findings and orders. The fact that the rate in question is related to, and used in connection with, a rate that is wholly local to the state, does not derogate from the complete and paramount authority of the Federal Commission, when, as here, the rate in controversy has been found by that Commission to be part of a through interstate rate. For, as said by Mr. Justice Hughes, in *Houston & Texas Ry.* v. *U. S., supra,* 351:

> "wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves a control of the other, it is Congress, and not the states, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

The Illinois Commission has attempted to do here precisely what the Texas Commission sought to accomplish in the Shreveport case, *Houston & Texas Ry. Co.* v. *U. S., supra,* viz: to compel the carrier to either reduce the interstate rates, or discriminate in favor of intrastate shippers.

II.

THE DISCRIMINATION AGAINST INTERSTATE COMMERCE WHICH THE ORDER APPEALED FROM ENTAILS.

The complainant, Poehlmann Bros. Company, proved by admissions of record, that to give effect to the Illinois Commission's order is to burden interstate commerce, to discriminate against localities and shippers in other states, to give undue preference to localities and shippers in Illinois and to deprive the interstate carrier of interstate commerce that it has enjoyed and will continue to enjoy if the ruling of the Interstate Commerce Commission stands as controlling and conclusive, unimpaired by the conflicting ruling of the State Commission.

At the hearing before the Interstate Commerce Commission, June 14th, 1912, Mr. Poehlmann testified that Poehlmann Bros. Company consumed approximately 30,000 tons of coal a year at its Morton Grove plant and that two-thirds of that quantity of coal came from points of origin outside of the State of Illinois. (Trans., 24, 25; Rec., 105, 106.) The same witness, testifying before the Illinois Commission in 1914, testified as follows:

> "Q. About how many tons of coal a year do you consume in your business?
>
> A. Approximately 30,000.
>
> Q. What portion of your coal comes from mines in the State of Illinois?
>
> A. At the present time almost all of it." (Trans., 15; Rec., 58, 59.)

The foregoing is undisputed evidence that came from the petitioner.

It will be noted that Mr. Poehlmann testified before the Illinois Commission about two years after he testified before the Interstate Commerce Commission. It is ob-

vious that in that period of time Mr. Poehlmann had reached the conclusion that there was a prospect of the complaint succeeding before the Illinois Commission and failing before the Interstate Commerce Commission. If the Illinois Commission granted reparation, the reparation thus allowed could be collected only on Illinois coal. Poehlmann Bros. Company, consequently, began purchasing substantially all of its coal in Illinois, whereas previously it had purchased two-thirds of it from points of production outside the State of Illinois.

If the Illinois Commission's order is to be given effect, plaintiff in error will receive twenty cents per ton less for transporting the 30,000 tons per annum of coal consumed by Poehlmann Bros. Company. This means that it will receive $6,000 per annum less than previously for the same service, unless a part of the coal comes from interstate points of origin. Mr. Poehlmann's testimony shows that exigency is guarded against. The 20,000 tons of coal that previously moved from interstate destinations, if it continued to move from interstate destinations would net the carrier $4,000 per annum more than the carrier will receive on the same quantity of coal moving intrastate from Illinois points of origin, if the Illinois Commission's order is obeyed.

The foregoing is merely an illustration drawn from the admissions of the complainant and by no means indicates the full extent to which the order appealed from burdens and discriminates against interstate commerce. The plaintiff in error will discriminate against interstate coal if it reduces its forty-cent rate from Chicago to Morton Grove on Illinois coal without making corresponding reductions on interstate coal on which it would perform precisely the same transportation service. Such discrimination would be a violation of Sections 2 and 3 of the Act to

Regulate Commerce. The only way to avoid such discrimination and still comply with the Illinois Commission's order appealed from would be to reduce also the rate on interstate coal from forty cents to twenty cents per ton.

The Interstate Commerce Commission, in passing upon plaintiff in error's rights in this connection, held that on this record plaintiff in error could not be required to accept less than its present rate of forty cents per ton on interstate movements. Here then is a situation where the carrier cannot avail itself of the lawful rate the Interstate Commerce Commission has sanctioned without being guilty of the unlawful discrimination which a compliance with the order of the Illinois Commission entails.

Considering separately, for the moment, the plaintiff in error's lawful rights in the premises, can it be doubted that it is legally entitled to collect its full rate of forty cents per ton, on interstate coal in accordance with its tariff passed upon and sustained by the Interstate Commerce Commission? Can there be any doubt that an order of the Illinois Commission must be invalid that prescribes a preferential rate under these circumstances for the transportation of intrastate coal, a compliance with which will result in actual discrimination against interstate commerce?

This court has answered this question in the following language:

> "The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority." (*Houston & Texas Ry. Co.* v. *U. S.*, 234 U. S., 342, 354.)

The order appealed from does not follow the standard set by Federal authority but is in direct conflict therewith.

The effect of complying with the Illinois Commission's order would by no means be confined to the Poehlmann case, nor to the coal consumed at the Town of Morton Grove. It would necessarily extend to many other stations. Under the Fourth Section of the Act to Regulate Commerce and under Section 25 of the Illinois Act to Establish a Board of Railroad and Warehouse Commissioners as amended June 10, 1911, a carrier may not charge more for a short haul than for a long haul over the same line of railway and in the same direction when the shorter is included within the longer. If the rate from Chicago to Morton Grove is cut from forty cents to twenty cents, the rates to intermediate points must be reduced to the twenty-cent basis. Moreover, the rate to the station beyond Morton Grove cannot be one hundred per cent. higher than the rate to the station of Morton Grove. If the forty-cent rate is reduced to a twenty-cent rate to Morton Grove, corresponding reductions must be made to stations beyond in order that the general level of rates and relation of rates as between those adjacent stations may be fair and reasonable.

But the effect of a compliance with the Illinois Commission's order would extend far beyond all of this. If the rate is reduced to Morton Grove and stations in its vicinity on that branch of plaintiff in error's line, which runs from Chicago to Milwaukee, corresponding reductions must be made on its other branches running north and west from Chicago, namely: the branch from Chicago to Evanston, Illinois, and the branch from Chicago to Elgin, Illinois, and points beyond.

III.

FAILURE OF PROOF TO JUSTIFY THE ORDER OF REDUCTION IN RATE.

The Interstate Commerce Commission, in the exercise of its sound judgment and discretion within the field where it is supreme, declared that there was insufficient evidence in the present record to warrant a reduction or other regulation of the rate which the State Commission reduced. *Poehlmann Bros Co.* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92. When the Interstate Commerce Commission found the evidence was insufficient to warrant a reduction in the rate, it was powerless, under the Act, to reduce it.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

The Interstate Commerce Commission, in passing upon the facts in this case, was governed by the law outlined in the foregoing quotation. It declined to disregard all rules of evidence and capriciously make findings by administrative fiat. Under these circumstances, we are apparently forced to the conclusion that the Illinois Commission's order is merely administrative fiat. To reason

otherwise is to argue that the Interstate Commerce Commission's judgment is wrong within the very province where its judgment is conclusive.

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

IV.

THE ORDER APPEALED FROM, IF COMPLIED WITH, WOULD CAUSE DISCRIMINATION AGAINST PERSONS AND LOCALITIES IN VIOLATION OF SECTION 3 OF THE ACT TO REGULATE COMMERCE.

Section 3 of the Act to Regulate Commerce contains the following provision:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It is obvious that charging twenty cents for hauling the intrastate coal from Chicago to Morton Grove and charging one hundred per cent. more for the same service on interstate coal, would violate the foregoing provision of Section 3, since it would necessarily give substantial advantage to coal producing localities in Illinois over coal producing localities across the state line in Indiana. Moreover, the persons, companies, firms and corporations engaged in the producing and merchandising of coal on the west side of the Illinois-Indiana state line would have an advantage over those on the east side of that line. The tendency of this advantage would be to build up the localities and industries in Illinois, that have to do with the producing and merchandising of coal, and retard the growth and development of those to the east of the state line.

V.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 13 OF THE ACT TO REGULATE COMMERCE.

It is, of course, conceded that a State Commission may have the right, and even the duty, to guard state interests where intrastate and interstate commerce are commingled and interdependent, as in the case at bar.

That such interests represented by a State Commission may be preserved and complaints involving same may be orderly disposed of without a conflict between State and Federal authority, Congress has provided, in Section 13 of the Act to Regulate Commerce, as follows:

> "Said Commission (the Interstate Commerce Commission) shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any state or territory at the request of such Commissioner or Commission."

In the case at bar the Illinois Commission did not see fit to avail itself of the means thus provided of procuring a harmonious adjustment of the questions involving commingled and interdependent state and interstate commerce. On the contrary, the Illinois Commission, disregarding the foregoing provision, and disregarding the fact that the Interstate Commerce Commission had already assumed jurisdiction of these questions, entered upon an individual investigation of its own which has resulted in an opinion by that Commission directly in conflict with the opinion of the Interstate Commerce Commission.

We submit this action of the Illinois Commission is in contravention of Section 13 of the Act to Regulate Commerce.

VI.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 15 OF THE ACT TO REGULATE COMMERCE.

Congress, by Section 15 of the Act to Regulate Commerce, specifically delegated to the Interstate Commerce Commission jurisdiction over joint through rates and authority "to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair and reasonable to be thereafter followed."

The Interstate Commerce Commission, in the case at bar, determined that the practice to be followed in respect of the joint rate in question should be that of regulating the through rate as a whole; that it was not proper to regulate one factor only of this joint rate,

and that the charge complained of was not shown to be unreasonable.

We submit the Illinois Commission's opinion and order contravene Section 15 of the Act to Regulate Commerce to the extent that the Illinois Commission has thereby arrogated to itself jurisdiction to regulate a joint through rate which involves commingled and interdependent interstate and intrastate shipments. The order of the State Commission does not follow or conform to the finding of the Interstate Commerce Commission but directly conflicts and interferes with that finding. This court, in *Houston & Texas Ry.* v. *U. S.*, 234 U. S., 342, 354, said:

> "The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

VII.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 6 OF THE ACT TO REGULATE COMMERCE.

Section 6 of the Act to Regulate Commerce reads in part as follows:

> "Nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between points named in such tariffs than the rates, fares and charges which are specified in the tariff filed and in effect at the time."

The published tariff of plaintiff in error, lawfully in effect, prescribes a rate of forty cents per ton as its charge for transporting coal from Chicago to Morton

Grove. The Illinois Commission, by the order appealed from, requires the plaintiff in error to accept the less rate of twenty cents per ton for that service whenever the coal originates at points in Illinois.

The Interstate Commerce Commission has expressly held that this factor of transportation is an inseparable part of the through haul and has held in substance that on account of its relation to various rates, including, of course, the interstate rates and intrastate rates of which it forms an unvarying factor, the charge should remain relatively constant or unvarying. It may not, under the Interstate Commerce Commission's rule, be less when in combination with one set of rates than when in combination with another set of rates. It is in this connection that most clearly is revealed the wisdom of giving to the Interstate Commerce Commission exclusive authority over rates that are partly interstate and partly intrastate in their character.

The Interstate Commerce Commission, having taken this jurisdiction, the carrier can no longer say that on transportation that originates in Illinois a lower and different rate will be charged than is published in its interstate tariffs to be applied on interstate and commingled interstate and intrastate traffic. Plaintiff in error will have to do this, however, if it complies with the order appealed from.

We submit the order of the Illinois Commission is thus shown to be in contravention of Section 6 of the Act to Regulate Commerce.

VIII.

THE SHREVEPORT PRINCIPLE.

We present to this court a question of unusual gravity and importance that has arisen under the Act to Regulate Commerce as amended. The question is somewhat analogous to the central questions involved in the *Minnesota Rate Case*, 230 U. S., 352, and in the so-called Shreveport Case, *T. & P. Ry. Co.* v. *U. S.*, 234 U. S., 342.

This court is asked to say whether the general principle of law declared in the Shreveport Case should control in cases involving facts and conditions such as are presented by this record.

The amendment to the Act to Regulate Commerce, under which the central question here presented has arisen, is relatively new. Sufficient time has not elapsed since its adoption to bring before this court many of the academic questions of broad and general application that must, in the course of time, be finally dealt with here.

This court has not yet declared whether a common carrier, subject to the Act to Regulate Commerce, must submit to having its rates and earnings reduced by state authority for a service applicable alike to interstate and intrastate transportation when the Interstate Commerce Commission has already passed on the same state of facts in the same record and held the facts insufficient to support an order reducing the rates.

This court has not yet said whether, under the conditions referred to in the preceding paragraph, the carrier can be forced by the action of a State Commission to reduce its charges for interstate carriage that the Inter-

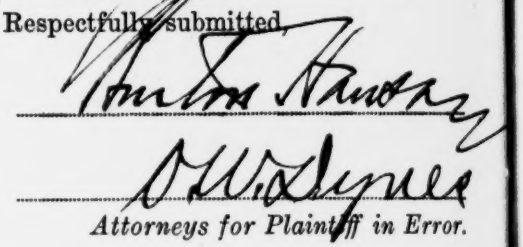
state Commerce Commission has held not to have been shown unreasonable or to be forced to the alternative of charging 100 per cent. more to the interstate shipper than the State Commission allows it to charge the intrastate shipper for that part of the service that is common to both.

This court has not yet said that the action of the Interstate Commerce Commission must be regarded as conclusive and preclude contrary action by a State Commission when the former holds that a through rate, one factor of which is common to interstate as well as intrastate traffic, must be regulated as a whole instead of merely by regulating the one factor thereof which is common to interstate and intrastate traffic.

These are all questions entailing the construction of the Federal Act to Regulate Commerce that can only be finally determined by this court.

Plaintiff in error contends that the principle of the so-called Shreveport Case governs and that a just disposition of this case requires the application of that principle to the state of facts presented by this record.

Respectfully submitted,



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